

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

x

PASQUALE STISO
Reg. No. 40771-054
Federal Prison Camp Canaan
P.O Box 200
Waymart, PA 18472

3:18-cv-2375

Plaintiff,

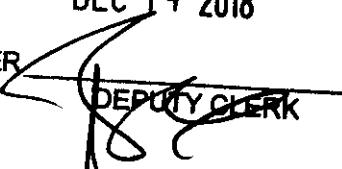
v.

UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530

UNITED STATES DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATIONS
935 Pennsylvania Avenue, NW
Washington, DC 20530

FILED
SCRANTON

DEC 14 2018

PER 
DEPUTY CLERK

Defendants.

x

COMPLAINT FOR DECLARATORY RELIEF

Pasquale Stiso, appearing pro se, brings this action against the Department of Justice (the “DOJ”) and the Federal Bureau of Investigations (the “FBI,” and with the DOJ, the “Defendants”), a component of the DOJ.

Nature of the Action

1. This is an action brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., to compel the Defendants to comply fully with FOIA, including producing the records requested by Stiso from each Defendant. Each Defendant is statutorily mandated to comply with FOIA.

Jurisdiction and Venue

2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
3. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

The Parties

4. Stiso is an individual who is serving a 41 month sentence at Federal Prison Camp Canaan in Waymart, Pennsylvania.

5. After a jury trial in the United States District Court for the District of New Jersey, Stiso was convicted in June 2016 of one count of wire fraud conspiracy, six counts of wire fraud and three counts of money laundering and sentenced to a term of imprisonment of 43 months on all counts. On appeal, the Court of Appeals for the Third Circuit affirmed Stiso's conviction but vacated his sentence and remanded the matter to the trial court for resentencing. *United States v. Stiso*, 708 Fed. Appx. 749 (3d Cir. 2017). On December 12, 2017, the trial court resentenced Stiso to a prison term of 41 months on all counts. Stiso appealed that sentence, and the appeal is pending.

6. The DOJ is a department of the Executive Branch of the United States Government, and the FBI is a component of the DOJ. The DOJ and the FBI are each an "agency" within the meaning of 5 U.S.C. § 552(f). Upon information and belief, each Defendant has possession of, and control over, the records that are the subject of Stiso's FOIA requests.

Factual Allegations

7. Over the course of several months, Stiso made a series of proper, written requests under FOIA to each of the Defendants. Throughout this Complaint, Stiso's requests are

collectively referred to as the “FOIA Requests” and individually by inserting the name of the relevant Defendant agency as a descriptive (i.e., “DOJ FOIA Request”).

8. The filing of this Complaint became necessary as a result of the Defendants’ failure to comply with various aspects of FOIA by having failed to produce any records sought by Stiso in the FOIA Requests.

9. In an Executive Order dated January 21, 2009 (the “Disclosure Executive Order”) addressed to the “Heads of Executive Departments and Agencies,” then President Obama declared that “[a]ll agencies should adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open government. The presumption of disclosure should be applied to all decisions involving FOIA.” Upon information and belief, the Disclosure Executive Order remains in effect and applies to the Defendants.

10. In response to the Disclosure Executive Order, then Attorney General Eric Holder issued a March 19, 2009 memorandum (the “Disclosure Memorandum”) for Heads of Executive Departments and Agencies addressing the presumption of openness. Mr. Holder explained that “an agency should not withhold information simply because it may do so legally, or withhold records merely because it can demonstrate, as a technical matter that the records fall within the scope of a FOIA exemption.” Upon information and belief, the Disclosure Memorandum remains in effect and applies to the Defendants.

11. As of the filing of this Complaint, Stiso has, to the best of his knowledge, exhausted all required administrative remedies applicable as a condition precedent to the filing of this action.

12. FOIA requires each of the Defendants, upon receipt of a properly framed request for agency records, to conduct a reasonable search for the records requested and to be able to demonstrate the reasonableness of its search if requested by a requestor to do so. FOIA also provides certain exemptions to government agencies that enable an agency to withhold the production of records based upon the nature of the request and the documents or records sought by the requestor. As detailed below, the Defendants have failed to comply with FOIA's statutory mandates.

A. The DOJ FOIA Request.

13. In a letter to the DOJ dated March 29, 2018, Stiso requested that the DOJ produce "any and all information of complaints, disciplinary actions and adjudications thereof involving Anthony Mahajan, a former AUSA, with the United States Attorney's Office . . . in Newark, New Jersey." Mr. Mahajan was the lead prosecutor at Stiso's criminal trial. OPR assigned this inquiry request number F18-00100.

14. Stiso's inquiry into whether Mr. Mahajan had been internally disciplined was hardly a fishing expedition. In his direct appeal of his conviction and sentence, Stiso alleged that certain conduct by Mr. Mahajan during the course of trial was so improper as to warrant Stiso's conviction being vacated. The Court of Appeals disagreed, finding that Stiso's counsel failed to object to Mr. Mahajan's conduct and, as a result of those missing objections, the "plain error" standard of review applied and Stiso failed to meet that heightened standard. However, the court did find that "there is no doubt that the government attorney acted improperly by violating the District Court's clear instructions." The court added, "[w]e trust that the United States Attorney for the District of New Jersey has taken or will take appropriate disciplinary steps. *That the Assistant United States Attorney's flagrant disregard of the District Court's instructions has not*

resulted in reversal does not mean it can be taken lightly.” Stiso, 708 Fed. Appx. at 761, n. 10 (emphasis supplied).

15. On May 1, 2018, the Office of Professional Responsibility “the “OPR”), a “component” of the DOJ, issued a response to the DOJ FOIA Request that was in reality a non-response: the OPR “decided to neither confirm nor deny the existence of any such records [sought by Stiso] pursuant to Exemptions 6 and 7(C) of the FOIA,” concluding that “[e]ven to acknowledge the existence of law enforcement records about an individual would constitute a clearly unwarranted invasion of personal privacy and could reasonably be expected to constitute an unwarranted invasion of personal property.”

16. The DOJ FOIA request, however, had nothing to do with “law enforcement records”; it sought documents in Mr. Mahajan’s disciplinary file. Thus, Stiso appealed the OPR’s disposition of the DOJ FOIA Request, and on June 6, 2018, DOJ’s Office of Information Policy (“OIP”) affirmed OPR’s disposition, reasoning that even “[c]onfirming or denying the existence of such records, including law enforcement records concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

B. The FBI FOIA Request.

17. In a letter to FBI also dated March 29, 2018, Stiso requested that FBI provide “any/and all information regarding [Stiso] maintained in your files.” FBI assigned this request File No. 1401624-000.

18. In a letter dated April 6, 2018, the FBI denied Stiso’s production request on the grounds that “[t]he records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive requests, and

the release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” Thus, according to the FBI, “[t]he material you requested is in an investigative file which is exempt from disclosure pursuant 5 U.S.C. § 552(b)(7)(A).

19. The FBI improperly refused to produce any records under this blanket assertion of § 552(b)(7)(A). Moreover, it did not release any segregable portions of the withheld records or provide Stiso with a list or description of the withheld records. Nor did the FBI include any explanation or factual basis for its claim of exemption other than conclusory statements.

20. Stiso appealed the FBI’s denial to the OIP, claiming that the § 552(b)(7)(A) exemption had no application to his FBI FOIA Request because the disclosure of those records could not reasonably be expected to interfere with enforcement proceedings that have been concluded for years. On July 2, 2018, OIP affirmed that denial, asserting that the release to Stiso of the information about himself “could reasonably be expected to interfere with enforcement proceedings.” Thus, according to OIP, the information sought by Stisco was protected from disclosure by § 552(b)(7)(A).

First Claim for Relief

21. Stiso repeats and realleges all of the allegations set forth in the preceding paragraphs.

22. Stiso is entitled to a declaration that each of the Defendants has failed to respond to the FOIA Requests or assert any exemption under FOIA that would justify withholding the records requested, and as a consequence, the Defendants have violated FIOA and their actions are unlawful.

Second Claim for Relief

23. Stiso repeats and realleges all of the allegations set forth in the preceding paragraphs.

24. Upon information and belief, the records sought in the FOIA Requests are in the custody and control of each of the Defendants and are not subject to any valid claim of exemption allowing them to be withheld from public disclosure.

25. Stiso has exhausted all required all available administrative remedies against the Defendants.

26. Stiso has a legal right under FOIA to obtain the records that he seeks, and there is no legal basis for the Defendants to deny the FOIA Requests.

27. An actual and justiciable controversy exists in that the Defendants have failed to disclose and produce the records sought by Stiso in the FOIA Requests even though they have a statutory obligation to do so.

28. As a result of the foregoing, Stiso is entitled to a declaration that each of the Defendants is obligated to provide him with the records that he seeks in the FOIA Requests.

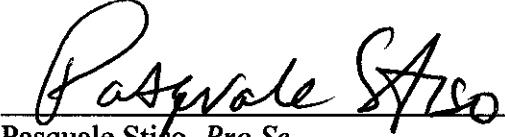
[REQUEST FOR RELIEF FOLLOWS ON NEXT PAGE]

WHEREFORE, Stiso request that the Court:

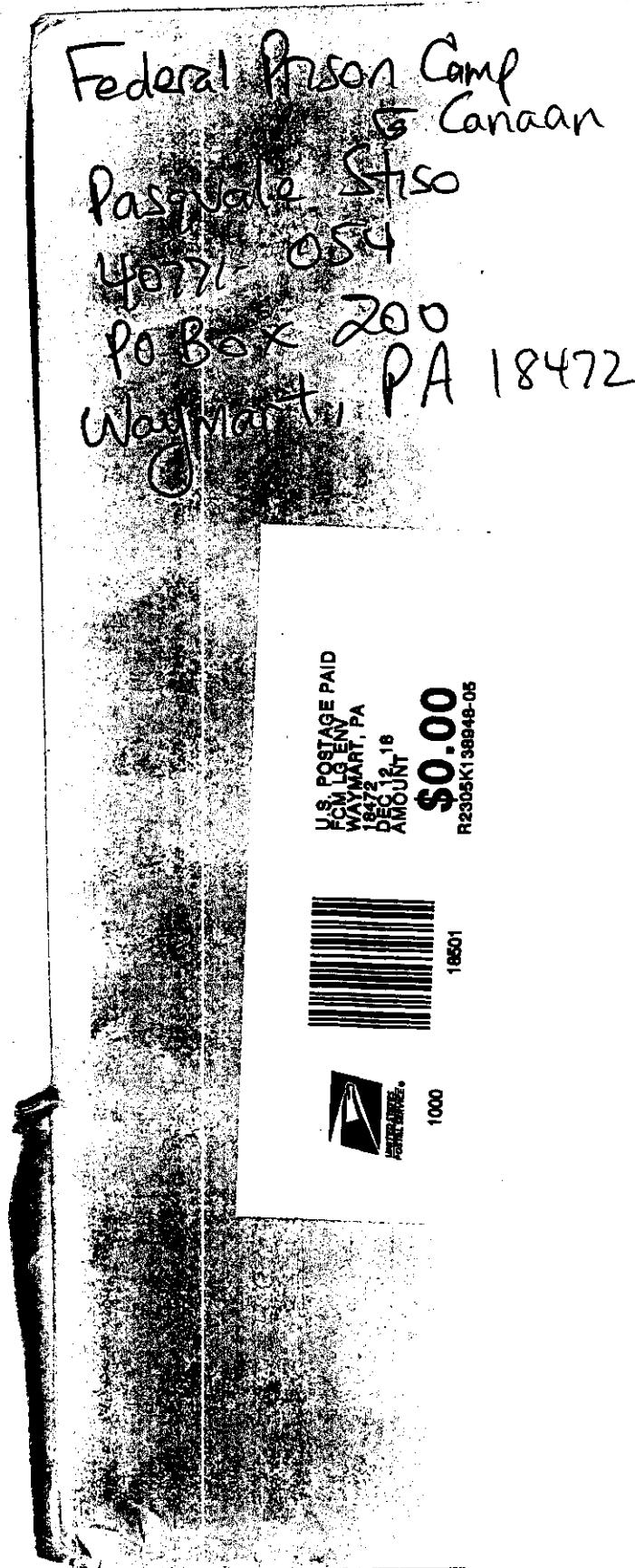
- (A) Declare that the Defendants' failure to respond to the FIOA Requests or assert any valid exemption under FOIA to justify withholding the requested records violates FOIA and is unlawful;
- (B) Declare that Stiso is entitled to the records sought in the FOIA Requests; and
- (C) Grant such other and further relief as it deems proper under the circumstances.

Dated: Waymart, Pennsylvania
December 11, 2018

Respectfully submitted,



Pasquale Stiso, Pro Se
Reg. No. 40771-054
Federal Prison Camp Canaan
P.O. Box 200
Waymart, PA 18472



OFFICE OF
UNITED STATES
FOR THE
MIDDLE DISTRICT
William J. /
235 N.
P.O. Box
Scranton
Attn: Peter
Acting Cl